Supreme Court, U.S.
FILED
JUL 24 2001
OFFICE OF THE CLERK

No. 00-1307

In The Supreme Court of the United States

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY,

Petitioner,

v.

SIGMON COAL COMPANY, INC. AND JERICOL MINING, INC.,

Respondents.

On a *Writ* of *Certiorari* to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE RESPONDENTS

John R. Woodrum
Counsel of Record
W. Gregory Mott
Heenan, Althen & Roles, LLP
1110 Vermont Avenue, N.W., #400
Washington, D.C. 20005
(202) 887-0800

Harold R. Montgomery
Post Office Box 366
Jonesville, Virginia 24263
(703) 346-2006

Counsel for Respondents

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the Commissioner of Social Security violates Section 9701(c)(2) of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701(c)(2), by assigning beneficiaries in the UMWA Combined Benefit Fund to the successor in interest of the signatory operator that actually employed the beneficiaries.

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

The caption of the case contains the names of all the parties. Respondents, Sigmon Coal Company and Jericol Mining, Inc., have no parent of subsidiary corporations that require disclosure under Supreme Court Rule 29.6.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6 ii

TABLE OF AUTHORITIES v

STATEMENT 1

A. Events Leading To The Enactment Of The Coal Industry Retiree Health Benefit Act of 1992 1

B. Congressional Intervention and the Coal Act 7

C. SSA's Implementation Of The Act 14

SUMMARY OF ARGUMENT 16

ARGUMENT 19

A. The Unambiguous Definition Of "Signatory Operator" at § 9701(c)(1) Does Not Include a "Successor in Interest" 21

B. The Definition of "Related Person" at § 9701(c)(2)(A) Does Not Include a Successor in Interest to a Signatory Operator 24

1. The Isolated Comments of Legislators Are Entitled To No Weight 26

2. General Successor Principles Advanced By The Commissioner Do Not Inform The Coal Act Text 29

3. There Is No Evidence That a Purpose of the Coal Act Was to Impose Liability on a Successor in Interest to a Signatory Operator 32

C. Congress Did Not Delegate The Commissioner Authority to Expand Liability Under The Act 35

D. Applying § 9701(c) As Written Does Not Produce A Result In Conflict With The Act 37
CONCLUSION 50

TABLE OF AUTHORITIES

CASES

Amax Coal Co. v. NLRB, 614F.2d 872 (3d Cir. 1980), *rev'd on other grounds*, 453 U.S. 322 (1981) 41
Bates v. United States, 522 U.S. 23, (1997) 22
Board of Governors of the Fed. Reserve v. Dimensions Fin. Corp., 474 U.S. 361 (1986) 38
Brown v. Gardner, 513 U.S. 115 (1994) 23
Burlington N. R.R. v. Oklahoma Tax Comm'n, 481 U.S. 454 (1987) 19
Carbon Fuel Co. v. USX Corp., 100 F.3d 1124 (4th Cir. 1996) 41-42, 43
Chevron, USA, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 35
Christensen v. Harris County, 529 U.S. 576 (2000) 35
Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989) 19
Connecticut Nat'l Bank v. Germain, 503 U.S. 249 (1992) 19
Crooks v. Harrelson, 282 U.S. 55 (1930) 38-39
Dixie Fuel Co. v. Commissioner Soc. Sec., 171 F.3d 1052 (6th Cir.1999) 44
Eastern Associated Coal Corp. v. UMWA, 531 U.S. 57 (2000) 33
Eastern Enters. v. Apfel, 524 U.S. 498 (1998) . 2, 5, 6, 7, 48
Eastern Enters. v. Chater, 110 F.3d 150 (1st Cir. 1997), *rev'd sub nom. on other grounds*, 524 U.S. 498 (1998) 22, 23

EEOC v. Vucitech, 842 F.2d 936 (7th Cir. 1988) 29
Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469 (1992) 49
Fawn Mining Corp. v. Hudson, 80 F.3d 519 (D.C. Cir. 1996) 28
Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) 39
Hohn v. United States, 524 U.S. 236 (1998) 22
Holland v. New Era Coal Co., 179 F.3d 397 (6th Cir. 1999) 15, 26, 29
In re Burns, 887 F.2d 1541 (11th Cir. 1989) 27-28
In re Lady H. Coal Co., 199 B.R. 595 (S.D. W.Va.), *aff'd sub nom.*, 99 F.3d 573 (4th Cir. 1996), *cert. denied*, 520 U.S. 1118 (1997) 15
In re Leckie Smokeless Coal Co., 99 F.3d 573 (4th Cir. 1996), *cert. denied*, 520 U.S.1118 (1997) 15
In re Olga Coal Co., 159 F.3d 62 (2d Cir. 1998) 23, 28
Lindsey Coal Mining. Co. v. Chater, 90 F.3d 688 (3d Cir. 1996) 24
Massanari v. Sigmon Coal Co., No. 00-1307, *cert. granted* (U.S. Apr. 23, 2001) 8, 15, 28, 42
National Coal Assn. v. Chater, 81 F.3d 1077 (11th Cir. 1996) 28
National R.R. Passengers Corp.v. National Ass'n of R.R. Passengers, 414 U.S. 453 (1974) 35

Northwest Airlines, Inc. v. Transport Workers Union of America, 451 U.S. 77 (1981) 35
Ratzlaf v. United States, 510 U.S. 135 (1994) 26
R.G. Johnson Co. v. Apfel, 994 F. Supp. 10 (D.D.C. 1998), *rev'd on other grounds*, 172 F.3d 890 (D.C. Cir. 1999) 25, 28, 47
Rodriquez v. Compass Shipping Co., 451 U.S. 596 (1981) 19
Rodriguez v. United States, 480 U.S. 522 (1987) 33
Rowland v. California Mens Colony, Unit II Men's Advisory Council, 506 U.S. 194 (1993) 24
Russello v. United States, 464 U.S. 16 (1983) 22, 28
Sigmon Coal Co. v. Apfel, 226 F.3d 291 (4th Cir. 2000) 25, 39
Toibb v. Radloff, 501 U.S. 157 (1991) 27
United States v. Bestfoods, 524 U.S. 51 (1998) 30
United States v. Mead, 121 S. Ct. 2164 (2001) 35
United States v. Ron Pair Enters., Inc., 489 U.S. 235 (1989) 39
United States v. Wong Kim Bo, 472 F.2d 720 (5th Cir. 1972) 22
Upholsterers' Int'l Union Pension Fund v. Artistic Furniture of Pontiac, 920 F.2d 1323 (7th Cir. 1990) 29
U.S. Pipe & Foundry Co. v. Webb, 595 F.2d 264 (5th 1979) 41-42
Usery v. Turner Elkhorn Mining Co., 428 U.S. 44 (1976) 31

West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83 (1991) 27, 33

STATUTES

Dictionary Act, 1 U.S.C. §§ 1-6 24
Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 et seq.
§ 9701(b)(1) 21
§ 9701(c) ..... *passim*
§ 9701(c)(1) ..... *passim*
§ 9701(c)(2)(A) ..... *passim*
§ 9701(c)(2)(A) (i)-(iii) 24
§ 9701(c)(2)(A)(ii) 16
§ 9701(c)(2)(B) 49
§ 9702 13
§ 9704 14
§ 9704(a) 14
§ 9704(b) 13
§ 9705 13
§ 9706 23
§ 9706(a) 13, 22, 23, 35, 44
§ 9706(a)(3) 14
§ 9706(a)(1)-(3) 14-15
§ 9706(b) 45
§ 9706(b)(2) 22, 30
§ 9706(f) 43
§ 9711 ..... 14, 23, 26
§ 9711(c) 26

§ 9711(g)(1) 22, 26, 44
§ 9711(g)(2) 22, 30, 45
§ 9712 ..... 14, 23
§ 9712(d)(3) 28
§ 9712(d)(4) 26
30 U.S.C. § 932(h) 32
30 U.S.C. § 932(i)(3)(D) 31
30 U.S. § 932(j)(2) 31
30 U.S.C. § 1232(h) 13
Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, § 108(h)(9)(A), 108 Stat. 1464, 1487 (1994) ... 13

LEGISLATIVE MATERIALS

138 Cong. Rec. H11408 (Oct. 5, 1992)(statement of Dan Rostenkowski) 11-12
138 Cong. Rec. H11433 (daily ed. Oct. 5, 1992) (statement of Congressman Rodgers) 9
138 Cong. Rec. S3439 (daily ed. March 12, 1992) (statement of Sen. Specter) 9
138 Cong. Rec. S10783 (daily ed. July 29, 1992) (statement of Sen. Rockefeller) 8, 9-10
138 Cong. Rec. S10784 (daily ed. July 29, 1992) (statement of Sen. Byrd) 9
138 Cong. Rec. S10784 (daily ed. July 29, 1992) (statement of Sen. Wallop) 10
138 Cong. Rec. S10786 (daily ed. July 29, 1992) (statement of Sen. Lieberman) 8

138 Cong. Rec. S17603 (daily ed. Oct 8, 1992)
(statement of Sen. Wallop) 9
138 Cong. Rec. S17603, 604 (daily ed. Oct. 8, 1992)
(technical explanation of the Coal Act inserted
into the *Congressional Record*) 8, 33-34
138 Cong. Rec. S17637-38 (daily ed. Oct. 8, 1992) 48
138 Cong. Rec. S17566-01 40
138 Cong. Rec. S17607 40
138 Cong. Rec. at S17633 (daily ed. Oct. 8, 1992)
(statement of Sen. Rockefeller) 11
138 Cong. Rec. S17636 (daily ed. Oct. 8, 1992)
(statement of Senator Warner) 40-41
138 Cong. Rec. S17637-38 (October 8, 1992)
(September 25, 1992) 48
138 Cong. Rec. S18250 (daily ed. Oct. 8, 1992)
(statement of Sen. Glenn) 9
43 Fed. Reg. 36803 (Aug. 18, 1978) 31, 45

HEARINGS

*Agency Management of the Implementation of the
Coal Act: Hearings Before the Subcomm. on
Oversight of Gov't Management, Restructuring and
The District of Columbia of the Senate Comm. on
Gov't Affairs*, 105th Cong.(S. Hrg. 105-764)
(1998) 12

*Provisions Relating to the Health Benefits
Retired Coal Miners: Hearing Before the
Comm. On Ways and Means House of
Representatives* (Serial 103-59), 103d Cong. 24
(statement of Lawrence H. Thompson
Acting Commissioner of Social Security) 35-36

MISCELLANEOUS

15 William Meade Fletcher et al., *Cyclopedia of
the Law of Private Corporations*, § 7122
(perm. ed. rev. vol. 1983) 30
Holly Idelson, *Bills to Cut Oil Dependence Finally Head
to Conference*, 50 Cong. Q. Wkly. Rep.
2261 (Aug. 1, 1992) 10
David J. Laurent et al., *Successor Liability Under
the Coal Industry Retiree Health Benefit Act
of 1992*, 18 E. Min. L. Inst. ch. 1 (1998) 36
Herbert R. Northrup, *Taxing Nonsignatory Companies
to Pay for Collective-Bargaining Benefits Costs:
The Coal Mine Proposal*, 5, No. 1 Benefits
L.J. 103 (Spring 1992) 7
Nonna A. Noto, *Coal Industry: Use of Abandoned
Mine Reclamation Fund Monies for UMWA
"Orphan Retiree" Health Benefits* (Congressional
Research Service Report for Congress,
Sept. 10, 1992), *reprinted in*
38 Cong. Rec. S17606 ..... 6, 8

Charles R. Perry, *Collective Bargaining and the Decline of the United Mine Workers* (Indus. Research Unit, The Wharton School, Univ. of Pa. No. 60, 1984) 4, 5

Jim Rossi, *Lessons from the Procedural Politics of the Comprehensive National Energy Policy Act of 1992*, 19 Harv. Envtl. L. Rev. 195 (1995) .. 9, 10

Courtney Simmons, *Unmasking the Rhetoric of Purpose: The Supreme Court and Legislative Compromise*, 44 Emory L.J. 117 (1995) 37

Secretary of Labor's Advisory Comm'n on United Mine Workers of America Retiree Health Benefits, *Coal Commission Report* (Nov. 1990) ..... *passim*

No. 00-1307

In the Supreme Court of the United States

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY,
Petitioner,
v.
SIGMON COAL COMPANY, INC. AND JERICOL MINING, INC.,
Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

STATEMENT

A. Events Leading To The Enactment Of The Coal Industry Retiree Health Benefit Act of 1992

1. Beginning in 1950 the United Mine Workers of America (UMWA) and coal operators entered into a series of National Bituminous Coal Wage Agreements (NBCWA) which established the UMWA Welfare and Retirement Fund of 1950 (1950 Fund). At this time the UMWA represented

approximately 80% of bituminous coal production. *See* Secretary of Labor's Advisory Comm'n on United Mine Workers of America Retiree Health Benefits, *Coal Commission Report* 2 (Nov. 1990) [hereinafter Coal Comm. Rpt.]; *see also Eastern Enters. v. Apfel*, 524 U.S. 498, 506-508 (1998). The 1950 Fund compensated miners and their dependants and survivors for disability, death or retirement, as well as the medical expenses of miners and their dependents. The 1950 NBCWA established a tonnage royalty which the operators paid into the 1950 Fund. Three trustees managed the 1950 Fund. They determined coverage and eligibility, priorities among classes of beneficiaries, amounts of benefits, and all other related matters, consistent with the funds available. The 1950 Fund did not guarantee benefits to any category of beneficiaries, including retirees or their dependents.

2. Between 1950 and 1974, the trustees often altered the level of benefits according to the 1950 Fund's budget. If declining coal production reduced contributions, benefits were reduced. For example, from 1962 to 1966, health cards were taken from the employees of companies with delinquent contributions. Although the 1950 NBCWA was amended between 1950 and 1974, except for increases in the amount of royalty payments, the terms and structure of the 1950 Fund remained essentially unchanged. 524 U.S. at 506.

From 1950 to 1974, the 1950 Fund was the exclusive source of health, pension and other welfare benefits for all active, laid off, disabled and retired UMWA miners and their dependents. During this period, an employer's sole obligation was to pay the tonnage rate specified in the NBCWA. This

pay-as-you-go system was in place when the transaction giving rise to this action occurred in 1973.

3. Shackleford Coal Company (Shackleford), a family owned company, began mining and processing coal in eastern Kentucky in 1963. Joint Appendix at 70 ¶ 2 [hereinafter J.A.]. Based on information developed by the Social Security Administration (SSA or Commissioner), we now know that, of the miners who worked for Shackleford between 1963 and 1973, at least 86 eventually received a UMWA pension.[1] On June 1, 1973, Shackleford sold its mine to Irdell Mining, Inc. (Irdell). J.A. at 83. At the time of the sale Shackleford was signatory to the 1971 NBCWA. *Id.* at 70 ¶ 4. After the sale Shackleford's stockholders changed its name and, shortly thereafter, dissolved the corporation. Pet. Appdx. at 69a.

4. Charles and James Sigmon and Fred Langley formed Irdell in 1973 to acquire Shackleford's assets. *Id.* at 10a. There was no common ownership between Irdell and Shackleford. *Id.*; J.A. at 68 ¶¶ 9-11, 74 ¶¶ 3-4. Irdell purchased most of Shackleford's operating assets, coal inventory, supplies, leases and contracts, and assumed responsibility for Shackleford's collective bargaining agreement. J.A. at 20-43; Pet. Appdx. at 10a, 69a. Otherwise, Irdell did not assume Shackleford's liabilities. Pet. Appdx. at 10a. Irdell paid approximately $2.6

---

[1] Petitioner's Appendix to Petition for a Writ of Certiorari at 11a [hereinafter Pet. Appdx.]. Due to the nature of coal mining, miners often work for numerous employers. Thus, these miners likely worked for other coal companies as well. *See, e.g.*, J.A. at 107-109 (listing six distinct coal companies beginning in 1946 as having employed UMWA retiree John Thomas, the last being Shackleford in 1970).

million for Shackleford's assets, which was "fair market value," J.A. at 67-68 ¶ 6, and thereafter made a substantial capital investment and expanded the mine, *id.* at 72 ¶ 11. After the purchase, Irdell changed its name, operating as Shackleford Coal Company (which it was permitted to do pursuant to the asset purchase agreement) until 1977 when it changed its name to Jericol Mining, Inc. (Jericol).[2] Pet. Appdx. at 10a -11a. Under the terms of the 1971 NBCWA, Jericol was required to pay the specified tonnage royalty to the 1950 Fund. The 1950 Fund, in turn, provided health, retirement and other welfare benefits to Jericol's miners.

5. For the coal industry the 1970s was characterized by the rapid growth of coal mining nationally, significant changes in health, safety and environmental regulations, and the entry into the workforce of a new generation of coal miners. Coal Comm. Rpt. at 23. The Employee Retirement Income and Security Act of 1974 (ERISA) imposed significant new burdens on the 1950 Fund, and a court decision extended pension eligibility to about 19,000 retirees. *Id.* at 24. 1974 negotiations took place against a background of rising production and record prices in the coal industry. *See* Charles R. Perry, *Collective Bargaining and the Decline of the United Mine Workers* 207 (Indus. Research Unit, The Wharton School, Univ. of Pa. No. 60, 1984) [hereinafter Perry]. The Bituminous Coal Operators Association (BCOA), a multi-employer bargaining group,

[2] To avoid confusion all references to "Shackleford" refer to the company that sold its asset in 1973. All references to the company that purchased Shackleford's assets are to "Jericol."

agreed to the most generous contract in its history, increasing wages and benefits an estimated 45%. Perry at 128-129, 143.

To satisfy ERISA requirements the UMWA and the BCOA restructured the 1950 Fund, dividing it into separate pension and benefit plans called the UMWA 1950 Pension Plan (1950 Pension Plan) and the UMWA 1950 Benefit Plan (1950 Benefit Plan). Eligibility for the 1950 Plan was restricted to miners who retired in or before 1975. Coal Comm. Rpt. at 30. They also created the UMWA 1974 Pension Plan (1974 Pension Plan) and the UMWA 1974 Benefit Plan (1974 Benefit Plan) to provide pension and health benefits for miners who worked after 1975. *Id.* The 1974 NBCWA continued to require a fixed royalty amount, with all health and retirement benefits provided by the new UMWA Plans.

The share of total tonnage mined by NBCWA signatories declined sharply during the 1970s as new investors came into the coal industry. *Id.* at 24. The 1950 and 1974 Benefit Plans encountered financial problems as benefits increased, the amount of coal produced declined, a generation of miners retired, and health care costs escalated rapidly. 524 U.S. at 510; Coal Comm. Rpt. at 2. Jericol, which had been a signatory to the 1974 NBCWA, J.A. at 72 ¶ 11, refused to sign the 1978 NBCWA. Jericol and its employees ended their relationship with the UMWA in 1977 and had no connection with the UMWA Plans after 1977, or with the events that later led to the demise of the Plans.

6. In the 1978 NBCWA, signatories assumed the responsibility to provide health care for their active miners, as well as their 1974 Pension Plan pensioners (miners who retired after 1975) through individual company plans. Coal Comm.

Rpt. at 26, 30. Miners who retired prior to 1976 (including Shackleford's retirees) were not affected by this change; and their health care continued to be provided by the 1950 Benefit Plan. The 1974 Benefit Plan remained in existence, but only to provide benefits to miners who retired after 1975, and who would otherwise have lost coverage because their former employer went out of business or ceased to be signatory to a NBCWA. 524 U.S. at 509.

7. By the early 1980s, NBCWA percentage of coal production slipped from the 80% of the 1950s to 40%. As a result of high labor costs, many 1978 NBCWA signatories exited the industry or opened non-union mines. Coal Comm. Rpt. at 27; Nonna A. Noto, *Coal Industry: Use of Abandoned Mine Reclamation Fund Monies for UMWA "Orphan Retiree" Health Benefits* (Congressional Research Service Report for Congress, Sept. 10, 1992), *reprinted in* 138 Cong. Rec. S17606 [hereinafter CRS Rpt.]. By 1990, the 1950 and 1974 Benefit Plans faced a deficit of about $110 million, and obligations to beneficiaries continued to surpass revenues. 524 U.S. at 511. By September 1990, the NBCWA companies were contributing $3.96 per man hour to the UMWA Benefit Plans. Coal Comm. Rpt. at 95.

8. Responding to a lengthy strike against Pittston Coal Company, in 1990 Labor Secretary Elizabeth Dole created the Coal Commission. She charged it with recommending a solution for ensuring that UMWA retirees would continue to receive promised health care. 524 U.S. at 511. The Coal Commission projected that the Benefit Plans' deficit would exceed $300 million by 1993. Coal Comm. Rpt. at 3. Factors contributing to the deficit included health care inflation, a

precipitous decline in employment levels and mine closings, and a declining base of contributing companies. *Id.* at 42. The Coal Commission proposed alternative funding plans for the consideration of Congress: (i) a fund financed by an industry-wide fee to cover the orphans with a separate fund to be financed by signatories to the 1978 - 1988 NBCWAs who remained in business to cover the cost of employees who retired from those companies, or (ii) spread the cost of the retirees' health benefits across a broadened base of current and former signatory employers (apparently limited to employers that signed the 1978 - 1988 NBCWAs).

B. Congressional Intervention and the Coal Act

1. In devising a means for ensuring the continuation of UMWA retiree health benefits, Congress confronted many competing interests. 524 U.S. at 512-13. The UMWA wanted to avoid a loss of benefits. Signatories to the 1988 NBCWA wanted relief from the financial burden of the Benefit Plans. Employers that had negotiated out of the Benefit Plans strongly opposed any abrogation of their contracts. Non-union coal companies vehemently rejected any solution requiring them to finance UMWA retirees' health care. Some commentators thought that the problem was a private contract matter and questioned whether a legislated solution was appropriate.[3]

---

[3] *See* Coal Comm. Rpt. at 81-87 (statements of Commissioners Richard Holsten, et al.); Herbert R. Northrup, *Taxing Nonsignatory Companies to Pay for Collective-Bargaining Benefits Costs: The Coal Mine Proposal*, 5, No. 1 Benefits L.J. 103, 104 (Spring 1992) [hereinafter Northrup].

2. The legislative history reflects the difficulty in satisfying these competing interests. The Act's "complex and arduous history" led Congress to a solution which "best accommodate[d] the legitimate concerns of the many interested parties." 138 Cong. Rec. S17603, 604 (daily ed. Oct. 8, 1992) (technical explanation of the Coal Act inserted into the *Congressional Record*). Senator Liebermann described the Act as a "compromise provision on coal industry retiree health benefits which balances the needs of the . . . [UMWA] retirees and the interests of domestic and foreign coal companies." 138 Cong. Rec. S10786 (daily ed. July 29, 1992). He also noted that crafting the Act was difficult "because of the divergent interests among all the parties involved – union and nonunion coal companies, western and eastern coal companies, those who signed the 1988 [NBCWA] and those who have separate agreements with the UMWA." *Id.* Senator Rockefeller reiterated: "[l]engthy and difficult negotiations were required because of the myriad of conflicting interests in our nationwide coal industry. . . . The current approach is the one . . . most likely to command a consensus in the legislative process." 138 Cong. Rec. S10783 (daily ed. July 29, 1992).

3. Between 1989 and July 1992, Congress considered a number of proposals to fund health benefits for UMWA retirees.[4] The Coal Act is the product of substantial legislative

[4] For a detailed history of the legislative proposals that preceded the UMWA financing scheme ultimately enacted see CRS Rpt. at 138 Cong. Rec. S17611-12 (daily ed. Oct. 8 1992) (Appendix 3). *See also* Brief of *Amicus Curiae* R.G. Johnson Co., Inc. at 6-14, *Massanari v. Sigmon Coal Co.*, No. 00-1307, *cert. granted* (U.S. Apr. 23, 2001).

conflict and compromise, and represents a balance among the sharply divergent interests of the many groups who vigorously lobbied Congress. The *Congressional Record* and contemporaneous secondary sources leave no doubt that the Coal Act engendered more than the usual degree of conflict associated with evolving federal legislation.[5]

On July 29, 1992, the day the Senate amendment which ultimately became the Coal Act was finally introduced on the Senate floor, its sponsor, Senator Rockefeller, remarked:

> This has been one of the most contentious pieces of legislation I have worked on in the Senate. I have said from the beginning

[5] *See, e.g.* 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992) (statement of Sen. Wallop) (Coal Act presented some "of the most difficult issues [Congress] encountered in seeking the passage of . . . the Energy Policy Act of 1992."); 138 Cong. Rec. S3439 (daily ed. March 12, 1992) (statement of Sen. Specter) ("[I]t has been a difficult matter for many Senators who acknowledge the need but who have some doubts as to the specific remedy."); 138 Cong. Rec. H11433 (daily ed. Oct. 5, 1992); (statement of Rep. Rodgers) ("This was an especially contentious issue that divided the coal industry."). Majority Whip Robert Byrd noted that "getting [the Act] to the floor has been anything but simple." 138 Cong. Rec. S10784 (daily ed. July 29, 1992). *See also* 138 Cong. Rec. S18250 (daily ed. Oct. 8, 1992) (statement of Sen. Glenn) ("[T]he coal industry retiree health benefits package before us today has been among the most contentious matters facing legislators this year."); Jim Rossi, *Lessons from the Procedural Politics of the Comprehensive National Energy Policy Act of 1992*, 19 Harv. Envtl. L. Rev. 195, 220 (1995) [hereinafter Rossi] (the Senate Finance Committee threatened the future of the Energy Policy Act "by approving a highly controversial coal tax proposed by Senator Rockefeller to help pay for health benefits for retired miners.").

> that my goal was to protect the health care of retired coalminers and their families, and that I was not wedded to the details of how to do it.
>
> . . . .
>
> The current approach is the one sought by the [Bush] administration and in the end it appeared to be the one most likely to command a consensus in the legislative process.

138 Cong. Rec. S10783 (daily ed. July 29, 1992). Senator Wallop, who had helped draft the Energy Policy Act, Rossi at 220, and who had been reported as "eager for a compromise" on the UMWA retiree provision that "would let the legislation move ahead,"[6] similarly commented:

> In this resolution all of us wish there were some little piece of it that we could have left as originally drafted, or not have included even as drafted.
>
> But, having said that, I think it shows the best traditions of the Senate that a resolution to a very sticky, very thorny problem was arrived at in as fair and equitable a manner.

See 138 Cong. Rec. S10784 (daily ed. July 29, 1992) (statement of Sen. Wallop).

In October 1992, in conjunction with the by-then pro forma passage in the Senate (84-8) of the Energy Policy Act,

---

[6] Holly Idelson, *Bills to Cut Oil Dependence Finally Head to Conference*, 50 Cong. Q. Wkly. Rep. 2261 (Aug. 1, 1992).

Senator Rockefeller reiterated:

> The decision [regarding the funding mechanism] ultimately rested on the best basis for consensus in the legislative process.
>
> . . .
>
> [the] long and sometimes contentious road [was one where] [there were strong differences among many parties regarding the best solution to the problem. . . . The issue was always the difficult one of how to pay for [retiree health care].

138 Cong. Rec. at S17633 (daily ed. Oct. 8, 1992).

The balance achieved on the Coal Act in the Senate in July 1992 was so delicate that the House conferees found themselves barred from modifying any language in the UMWA Retiree Health Benefit provision of the Energy Bill. On October 5, 1992, Chairman of the House Ways and Means Committee, Dan Rostenkowski, lamented on the floor of the House:

> The House conferees are very uneasy with the provision included in the Senate Bill for financing these benefits. It appears to create numerous inequities among the companies that will be required to pay for these benefits and could set an unfortunate precedent for legislating a solution to what is, in essence, a private dispute.
>
> Yet in spite of these seemingly major and perhaps fatal flaws in their amendment, the Senate presented this to the House conferees on

> a take it or leave it basis – threatening defeat of the most comprehensive energy legislation in years if even the smallest problem were corrected by House conferees.

138 Cong. Rec. H11408 (daily ed. Oct. 5, 1992).[7]

---

[7] The importance of the July 1992 compromise was reiterated in 1998, in the following Senate testimony between Senator Rockefeller and Senator Conrad:

Comments of Senator Conrad:

> [Senator Rockefeller] had to make compromises. It was not a case where Senator Rockefeller was able to sit down at the table and just write it the way he would like to do it. He had to deal with not only the Senate of the United States, he had to deal with the U.S. House of Representatives, he had to deal with an administration, and the result was a compromise. . . . I know Senator Rockefeller feels very strongly that if you start to deal with any of this, you could unwind the whole agreement, and that is what he is desperately afraid of.

Agency Management of the !mplementation of the Coal Act: Hearings Before the Subcomm. on Oversight of Gov't Management, Restructuring and The District of Columbia of the Senate Comm. on Gov't Affairs, 105th Cong. 11 (S. Hrg. 105-764) (1998)(testimony of Sen. Conrad).

Comments of Senator Rockefeller

> I hope the Chairman understands that, fear on my part that once you start to clarify a law that was passed, indeed, as a compromise, as Senator Conrad indicated, in the compromise that came from the Bush administration, that once one gets into the clarification of the language of law, I start to sweat.

Id. at 15 (testimony of Sen. Rockefeller).

3. The Coal Industry Retiree Health Care Benefit Act of 1992 (Coal Act or Act) merged the 1950 and 1974 Benefit Plans into a new entity called the UMWA Combined Benefit Fund (Combined Fund). 26 U.S.C. § 9702. Section 9706(a) directed the Commissioner[8] to assign beneficiaries in the Combined Fund to a signatory operator that had employed the beneficiary in accordance with a three-tier assignment scheme. If the signatory operator was no longer in business, then the assignment was to be made to a related person to the signatory operator, as defined at § 9701(c)(2)(A) of the Act.

The Commissioner's duties under the Coal Act were twofold; calculate the annual premium assigned operators were required to pay on behalf of each assigned beneficiary, § 9704(b); and review UMWA retiree wage histories to identify, by October 1993, the entity to whom each beneficiary was to be assigned, § 9706(a). Beneficiaries who could not be assigned to an employer were to be placed in an unassigned pool.[9]

---

[8] References in original bill were to the Department of Health and Human Resources (HHS). In 1995, the Social Security Administration became an independent agency, and the Commissioner assumed the duties of the Secretary of HHS. Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, § 108(h)(9)(A), 108 Stat. 1464, 1487 (1994).

[9]Unassigned beneficiaries' health care costs were financed initially by transfers from the overfunded UMWA 1950 Pension Plan and, effective October 1, 1995, from interest earned on the Abandoned Mine Land Reclamation Fund (AML Fund), 26 U.S.C. § 9705, a trust fund financed by an excise tax on coal operators and administered by the Secretary of Interior under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232(h). In the event the annual authorized transfer amounts

Congress also included two unusual provisions in the Coal Act. A "reach back" provision imposed premium responsibility on employers who had been signatory to a UMWA coal wage agreement as far back as 1946. 26 U.S.C. § 9706(a)(3). A "reach out" or related person provision provided that, if the signatory operator was out of business, that operator's retirees could be assigned directly to a "related person" (as defined in § 9701(c)(2)(A)), and, if an assigned operator failed to pay any premium obligation, its related persons are jointly and severally liable. 26 U.S.C. § 9704(a).

Separately, the Act imposes a statutory requirement on signatories to a 1978 or later NBCWA who were providing health benefits to UMWA retirees under an individual employer plan (IEP) to maintain that IEP for the life of the retirees and their eligible dependents. 26 U.S.C. § 9711. Section 9712 required the UMWA and the BCOA to establish and finance a companion retiree plan known as the UMWA 1992 Benefit Plan (1992 Plan). 26 U.S.C. § 9712. Definitions establishing obligations and relationships in the 1992 Plan provide insight into the meaning of definitions that govern operation of the Combined Fund.

C. SSA's Implementation Of The Act

1. Between 1993 and 1997, the Commissioner assigned Jericol premium responsibility for 103 retired coal miners. Pet. Appdx. at 11a; 69a-70a. Each was assigned pursuant to the third tier of Congress's three-tiered assignment priority. *See* 26 U.S.C. § 9706(a)(1)-(3). Seventeen of the assigned miners actually worked for Jericol; the other 86 had worked for Shackleford, and had retired before the sale of Shackleford's assets in 1973. Pet. Appdx. at 29.[10] The notices stated that the retirees were being allocated to Jericol due to its purported status as a "successor" or a "successor in interest" to the long-defunct Shackleford.[11]

---

available from the AML Fund should prove insufficient to cover the health costs of the unassigned beneficiaries, assigned operators would make up the difference on a pro rata basis. 26 U.S.C. § 9704.

[10] Respondents do not challenge the Commissioner's authority to assign premium responsibility to Jericol for UMWA retirees Jericol actually employed. Pet. Appdx. at 71a. Contrary to the Brief of the *Amici* Trustees of the UMWA Combined Benefit Fund as *Amici Curiae* in Support of Petitioner 2, *Massanari v. Sigmon Coal Co.*, No. 00-1307, *cert. granted* (U.S. Apr. 23, 2001) [hereinafter Trustees' *Amici* Br.], Respondents have paid all premiums for Jericol's retirees.

[11] The Coal Act does not define "successor in interest" and the courts have not reached a consensus concerning the meaning to be given to the term as used in § 9701(c)(2)(A). *See In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 n.15 (4th Cir. 1996), *cert. denied*, 520 U.S. 1118 (1997). The Commissioner decided to interpret the term broadly, to include entities that purchased ongoing mining operations, although he could have chosen a more restrictive interpretation (e.g. a purchaser that takes the predecessor's tax attributes, *see In re Lady H Coal Co.*, 199 B.R. 595 (S.D. W.Va.), *aff'd sub nom.*, 99 F.3d 573 (4th Cir. 1996), *cert. denied*, 520 U.S. 1118 (1997). He also could have taken an even broader interpretation (e.g. a company that replaces a contract operator, *see Holland v. New Era Coal Co.*, 179 F.3d 397, 403) (6th Cir. 1999). Jericol's contention that it is not, in any event, a successor in interest to Shackleford within the meaning of the Coal Act has not been decided. That issue would remain if, notwithstanding the plain language of § 9701(c), the Court finds that the Act reaches a successor in interest of a signatory operator.

2. After the Commissioner rejected Jericol's administrative challenges, J.A. at 51-98, Jericol and Sigmon Coal Company, a related person to Jericol within the meaning of § 9701(c)(2)(A)(ii) of the Act, filed suit in the United States District Court for the Western District of Virginia. On November 18, 1998, the court granted summary judgment and ordered the challenged assignments withdrawn, finding that the Coal Act does not provide "for liability to be laid at the door of successors of defunct signatory operators." Pet. Appdx. at 74a. The Fourth Circuit affirmed, *see id.* at 36a, and subsequently denied the Commissioner's suggestion for rehearing on November 15, 2000.

SUMMARY OF ARGUMENT

By 1992, the UMWA 1950 and 1974 Benefit Plans, which provided health benefits to more than 100,000 retired union coal miners and their dependents, were near collapse. Half of the beneficiaries in the Plans had never worked for the 1988 signatories who were contractually obligated to finance the Plans. The union and the operators turned to Congress for relief.

After a long and contentious debate, and several failed efforts, a compromise was reached and the Coal Act was enacted in October, 1992. Congress merged the existing health plans into the Combined Fund, and allocated the Commissioner slightly less than a year to assign responsibility for more than 100,000 beneficiaries to signatory employers in accordance with criteria set out in the Act.

The Commissioner assigned Respondent Jericol premium responsibility for 86 UMWA retirees who never worked for Jericol. The assignments are based upon the

retirees' employment by an unrelated prior employer, Shackleford Coal Company. The Commissioner asserted that Jericol was a "related person" to Shackleford within the meaning of the Act, because Jericol had purchased Shackleford's mining assets in 1973.

Jericol, and its related person, Sigmon Coal Company, challenged these assignments on several grounds, including the fact that § 9701(c) of the Act, which defines "signatory operator" and "related person," does not authorize the Commissioner to assign liability to a successor or a successor in interest of a signatory operator. The courts below agreed with Jericol, finding that the plain language of the Coal Act does not permit assignment of liability to successors in interest of a signatory operator. The ruling below should be sustained.

First, the language and meaning of § 9701(c) is clear and unambiguous. No court has accepted the Commissioner's claim that the plain language in § 9701(c)(2)(A) authorizes assignments to successors of signatory operators.

Second, other sections of the Coal Act specifically address "successor in interest" liability thereby showing that, when Congress wished to assign liability to successors in the Coal Act, it did so. Going further, the treatment of successor liability in other statutes, such as the Black Lung Act, demonstrates that Congress explicitly allocated successor liability in the coal industry when it wished to do so.

Third, isolated, conflicting, and inconclusive comments in the legislative record provide no basis for ignoring the plain language of the Act. In fact, the legislative history reflects a highly contentious debate in which compromises were made as a result of vigorous lobbying by specific interests. Those

interests included signatory and non-signatory coal companies that had acquired mining assets over the years, and that would have faced unquantified, but potentially enormous liability, if they alone were liable for a predecessor's retirees.

Fourth, the Commissioner's interpretation is not entitled to deference. He has no special expertise in this matter. He engaged in no rule-making under the Administrative Procedure Act. He shifted positions repeatedly concerning assigning liability to successors. He was not delegated authority by Congress to develop a regulatory program to implement the plain definitions and assignment provisions set out in the Act. Accordingly, even if ambiguity existed (which it does not) the Commissioner's interpretation is entitled to no deference.

Finally, contrary to the Commissioner's claim, applying the Act as written does not result in an absurd outcome that Congress could not actually have intended. The Commissioner has not shown that application of § 9701(c) as written would cause harm to any beneficiary, and it is clear from the Act's funding provisions that no one will lose benefits.

There are many reasons why Congress might have decided that liability should not be extended to successors in interest to signatory operators. Signatory and non-signatory operators might have joined in opposition to the Act had it exposed them to successor liability for transactions dating back 40 years. Applying the plain language as written simply effectuates the delicate legislative balance that permitted the preservation of the retirees' benefits through passage of the Act. Further, the sheer administrative burden on SSA to explore the extensive pre-enactment history of transactions during the very short period allowed for completing the assignment process

might have jeopardized the program. Additionally, Congress could have concluded that, in view of the fact the Act would necessarily have a dramatic financial impact on the unionized coal industry, it would be unwise to exacerbate that problem by adding an overlay of successor liability.

The plain language of § 9701(c) does not include successors of signatory operators. The language should be enforced as written.

ARGUMENT

The scope of executive branch authority to assign Coal Act liability must be divined from the specific language that commanded a consensus in the legislature. This Court begins its statutory analysis with the presumption that Congress "says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). When, as here, the meaning of a statutory provision is otherwise "unambiguous, the judicial inquiry is complete." *Burlington N. R.R. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987)(citation omitted). Giving effect to the Coal Act's unambiguous terms is particularly appropriate here because Congress's words reflect a purposeful balancing of competing private interests borne from unusually difficult legislative deliberations and compromise. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 748 n.14 (1989) (citing *Rodriguez v. Compass Shipping Co.*, 451 U.S. 596, 617 (1981)("Strict adherence to the language . . . is particularly appropriate where, as here, a statute is the result of a series of carefully crafted compromises.")).

The critical statutory provision in this case is neither ambiguous nor complex.[12]

Petitioner and *Amici* Trustees' Combined Fund offer four justifications for the Commissioner's policy decision to impose liability on the successor in interest of a signatory operator: (i) read the definition of "signatory operator" at section 9701(c)(1) to encompass a successor in interest to the operator; (ii) read the definition of "related person" to a

---

[12] Section 9701(c) of the Coal Act provides:

(c) Terms relating to operators. – For purposes of this section –

(1) Signatory operator. – The term "signatory operator" means a person which is or was a signatory to a coal wage agreement.

(2) Related persons. –

(A) In general. – A person shall be considered to be a related person to a signatory operator if that person is –

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

signatory operator at § 9701(c)(2)(A) to encompass a successor in interest to the signatory operator; (iii) read the statute as being so ambiguous the Court should defer to the Commissioner's best judgment as to what Congress intended; or (iv) ignore the plain language in the statute on the basis that, as written, its application would produce a result Congress could not have intended.

As we shall demonstrate, § 9701(c) of the Coal Act, as written, is clear and easily applied, requires no deference to the Commissioner, and produces a result that is consistent with the purpose of the Act.

A. The Unambiguous Definition Of "Signatory Operator" at § 9701(c)(1) Does Not Include a "Successor in Interest"

A "signatory operator" is "a person which is or was a signatory to a coal wage agreement." 26 U.S.C. § 9701(c)(1). This declarative sentence is unusually easy to apply; a person either was – or was not – signatory to a "coal wage agreement," a term which itself is defined at § 9701(b)(1). The fact these terms are defined in the statute, rather than simply used in the text in a narrative fashion, strongly suggests they should be read as written. Section 9701(c)(1) simply does not include the words "successor" or "successor in interest." Any possible suggestion that the absence of these words is inconclusive is dispelled by examining the language and structure of the Act. Such review demonstrates that, when Congress intended to include a successor relationship within the scope of the Act, it did so explicitly.

Although the terms "successor" and "successor in interest" are not in § 9701(c)(1), they do appear elsewhere in

the Act. In § 9701(c)(2)(A), Congress specified that a "successor in interest" to a related person also is to be considered a related person. In § 9706(b)(2), Congress specified that a post-enactment "successor" to an assigned operator could, by mutual agreement, assume the operator's Combined Fund liability. In § 9711(g)(2), Congress specified that a post-enactment successor to a statutorily defined "last signatory operator" could, by mutual agreement, assume the operator's IEP and 1992 Plan liability. Finally, in § 9711(g)(1), Congress specified that for purposes of imposing liability on a statutorily defined "last signatory operator," that term included a "successor in interest." Since § 9711(g)(1) actually includes the very words the Commissioner asks the Court to read into § 9701(c)(1), the absence of those words from § 9701(c)(1) is clearly consequential. *Hohn v. United States*, 524 U.S. 236, 250 (1998)(citing *Bates v. United States*, 522 U.S. 23, 29 (1997)); *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972))("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

In *Eastern Enters. v. Chater*, 110 F.3d 150 (1st Cir. 1997), *rev'd sub nom. on other grounds*, 524 U.S. 498 (1998), the First Circuit was presented with the same invitation to read pre-enactment successor liability into the assignment criteria in § 9706(a). Paralleling the Commissioner's arguments in the instant case, Eastern argued that § 9706(a) was ambiguous because it was silent with respect to whether Combined Fund

beneficiaries should be assigned to a signatory operator's successor. The First Circuit rejected Eastern's claim that SSA should have filled the vacuum and assigned these miners to Eastern's successor, concluding that "reviewing the language and architecture of the Coal Act as a whole . . . we think it obvious that Congress purposely omitted any reference to successors in writing § 9706(a)'s assignment scheme." *Chater* 110 F.3d at 155 (citations omitted); *see also Brown v. Gardner*, 513 U.S. 115, 120 (1994).

In *In re Olga Coal Co.*, 159 F.3d 62 (2d Cir. 1998), the operator asked the court to import a definition from one part of the Coal Act to another. Olga's Chapter 11 Trustee argued that liability to the 1992 Plan under § 9712 is limited to operators who are still "in business," and that Olga was no longer "in business" within the statutory meaning. The court observed that "[i]n contrast to §§ 9706 and 9711, § 9712 contains no language limiting its applicability to signatory operators that remain in business." *Olga Coal*, 159 F.3d at 65. The court found this omission significant:

> This unambiguous textual distinction strongly suggests that Congress intended to exempt signatory operators no longer in business from the requirements of §§ 9706 and 9711, but not from § 9712. *See Double G. Coal Co.*, 898 F. Supp. at 355 ("[W]e must assume that if Congress had intended to exempt companies no longer in business from all of the provisions of the Coal Act, it would have so indicated.

Olga Coal, 159 F.3d at 66.

As the statutory construct demonstrates, Congress clearly knew how (and where) to include successors and successors in interest in the Coal Act, and it did not include them in § 9701(c)(1).

B. The Definition of "Related Person" at § 9701(c)(2)(A) Does Not Include a Successor in Interest to a Signatory Operator

The Commissioner focuses principally on the text of the "related person" provision at § 9701(c)(2)(A) as the alleged source of his authority to assign Coal Act liability to successors in interest of signatory operators. Brief for the Petitioner at 23, 24 [hereinafter Pet. Br.]. He asserts that because the words "signatory operator" appear in clauses (i), (ii), and (iii) of § 9701(c)(2)(A), it is fair to conclude that a signatory operator is both a "signatory operator" under § 9701(c)(1) *and* a "related person" in each of the three clauses of § 9701(c)(2)(A)(i)-(iii).[13] It is, of course, self-evident that signatory operators cannot both be described in § 9701(c)(1), and also be "described" in these

[13] The Commissioner and *Amici* Trustees' Combined Fund also suggest that generic provisions of the Dictionary Act, 1 U.S.C. §§ 1-6, should be imported to further expand the Coal Act's fully reticulated definitional scheme. By its terms, the Dictionary Act does not apply where the context of the federal statute under review indicates otherwise. The Coal Act deals specifically and in several separate provisions with successors and successors in interest. Under such circumstances it would be improper to graft the Dictionary Act onto the Coal Act's definitions. *See Lindsey Coal Mining. Co. v. Chater*, 90 F.3d 688, 693 (3d Cir. 1996) (refusing to supplant or amplify "in business" definition noting the Coal Act "supplies its own definition."); *see also Rowland v. California Mens Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 200 (1993).

three clauses. Rather, each clause specifically describes a particular entity or type of entity which *is not* a signatory operator, but which is, by definition, a "related person" *to* a signatory operator. Thus, those clauses are descriptive of related persons, and do not purport in any way to encompass the signatory operator itself.

No judge that has considered the Commissioner's argument – including those that have agreed with him for other reasons – has found this plain language argument persuasive. Every court has rejected it as a "strained" or "tortured," or "entirely illogical" tautology.[14] As Judge Williams observed below:

> The words "signatory operator" are used in the clauses, but so are the words "limited partner." A full reading of the statute makes it clear that limited partners are in fact not to be considered related persons. There is definitely a distinction between "describing" a person and merely mentioning or naming them, and signatory operators are merely named and mentioned in

[14] *R.G. Johnson Co. v. Apfel*, 994 F. Supp. 10, 14 (D.D.C. 1998) (rejecting as "entirely illogical" SSA's attempt to shoehorn signatory operators into clauses (i), (ii), and (iii) of the "related person" definition), *rev'd on other grounds*, 172 F.3d 890, 894 (D.C. Cir. 1999) ("[W]e are unable to quarrel with the district court's conclusion that the agency's construction of the related person definition is 'tortured'."); *Sigmon Coal Co. v. Apfel*, 226 F.3d 291, 304 (4th Cir. 2000) (Pet. Appdx. at 25a) ("Each clause describes persons who are connected to a signatory operator in a way that justifies 'related person' status. The inclusion of the term 'signatory operator' in each clause just explains the connection.").

the clauses. In fact, Congress demonstrated this distinction when it described signatory operators by defining them in 26 U.S.C. § 9701(c)(1).

Pet. Appdx. at 76a - 77a.

Moreover, if the term "related person" is interpreted as including a signatory operator's "successors in interest," then § 9711(g)(1) becomes mere surplusage. This is because §§ 9711(c) and 9712(d)(4) already provide that a "related person" is jointly and severally liable for the obligations of a "last signatory operator" or a "1988 last signatory operator." If "successors in interest" of signatories were already included within the statutory definition of "related persons," there would be no purpose in separately providing in § 9711(g)(1) that those obligations also extend to the "successor in interest" of a "last signatory operator." *See New Era*, 179 F.3d 403 (refusing to interpret § 9711 provisions as surplusage); *Ratzlaf v. United States*, 510 U.S. 135, 140-141 (1994) ("Judges should hesitate . . . to treat [as surplusage] statutory terms in any setting. . . .").

In sum, the Commissioner simply cannot show that the definition of "related person" provides a statutory basis for his decision to assign Jericol liability for Shackleford's retired employees. As we now show, the extra-textual sources the Commissioner relies upon provide no reason to override the Coal Act's unambiguous language.

1. The Isolated Comments of Legislators Are Entitled To No Weight

Where, as here, the meaning of a statutory provision is unambiguous, resorting to legislative history is inappropriate. The Commissioner points to "technical explanations" by Senators Rockefeller and Wallop as evidence of Congress's

intent to authorize assignment of liability to a successor in interest of a signatory operator. Pet. Br. at 27-28. This Court, however, has often cautioned against giving undue weight in statutory interpretation to isolated remarks of individual legislators in a comprehensive statutory scheme. *Toibb v. Radloff*, 501 U.S. 157, 162 (1991) ("Even were we to consider the sundry legislative comments urged in support of a congressional intent . . . the scant history on this precise issue does not suggest a 'clearly expressed legislative inten[t] . . . contrary . . .' to the plain language of the statute.") (citation omitted); *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98-99 (1991)("[W]here [the statutory text] contains a phrase that is unambiguous . . . *we do not permit it to be expanded or contracted by the statements of individual legislators* or committees *during the course of the enactment process.*")(emphasis added).

Thus, Senator Rockefeller's comment "for the record" that "the term 'signatory operator' includes a 'successor in interest of such operator,'" and Senator Wallop's unelaborated statement that "in specific instances successors to the collective bargaining agreement obligations of a signatory operator" constitute a fourth category of related persons are entitled to no weight. Pet. Br. at 27-28; Trustees' Amici Br. at 21. *See, e.g., In re Burns*, 887 F.2d 1541, 1545 (11th Cir. 1989) (where the Bankruptcy Code was the result of a series of last minute conferences and compromises between managers of both houses, "the best indicators of congressional intent . . . are the language and structure of the Code itself, not the accompanying statements of legislators *that carry the potential for reclaiming that which was yielded in the actual drafting*

compromise.")(emphasis added). While there is some evidence that provisions consistent with these comments had been in the text of an earlier version,[15] the compromise legislation was ultimately enacted without those words. Indeed, at least three appellate courts have specifically refused to resort to floor remarks to overcome Congress's unambiguous language in the Coal Act.[16] Even the panel majority in *R.G. Johnson* deemed the legislative history "inconclusive." 172 F.3d at 894.

---

[15] *See* Brief of *Amicus Curiae* R.G. Johnson Company, Inc. at 10 - 13, *Massanari* (No. 00-1307) (review of legislative history surrounding late July 1992 passage of the Senate amendment, enacted unchanged as the Coal Act). The omission of pre-enactment successor liability and inclusion of optional post-enactment successor liability in the Coal Act is significant, because the evolution of statutory provisions can be further evidence of legislative intent. *See Russello*, 464 U.S. at 23-24 ("Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.").

[16] *See National Coal Ass'n v. Chater*, 81 F.3d 1077, 1082 (11th Cir. 1996) (affirming the district court's reasoning that the legislative history of the Act does not overcome the plain statutory language); *Fawn Mining Corp. v. Hudson*, 80 F.3d 519, 521 (D.C. Cir. 1996) (affirming the district court's opinion that discounted the October 8, 1992 floor statements of Senator Rockefeller); *Olga Coal* , 159 F.3d at 67 (rejecting invitation to rely on Senator Rockefeller's October 8, 1992 remark that "[i]n Section 9712(d)(3) the payments continue to be made for as long as the signatory operator – or any related person– remains in business.").

2. General Successor Principles Advanced By The Commissioner Do Not Inform The Coal Act Text

The Commissioner suggests that successorship principles in other federal statutes should be reviewed to ascertain whether these principles formed a background context that may illuminate how those notions should be treated under the Coal Act. Pet. Br. at 36. In this regard, the employment law successorship liability cases offered by the Commissioner are readily distinguishable because they utilize an equitable balancing test in which a critical question is whether the successor had notice of the liability or claim against the predecessor.[17] The concepts utilized in these cases are especially ill suited as a basis for imposing liability under the Coal Act. In Jericol's case, the underlying events occurred almost 20 years before enactment of the Coal Act, at a time when UMWA retirees had no expectation of lifetime health benefits, and when Shackleford's only contractual obligation was to pay "welfare royalties" to the 1950 Fund. J.A. at 77.

---

[17] *See, e.g.* EEOC v. Vucitech, 842 F.2d 936, 945 (7th Cir. 1988)("The successor, if he knows of his potential liability, will demand compensation in the form of a lower price for the assets, and in this way the burden of liability will be shifted back to the owners of those assets, where it belongs."); *Upholsterers' Int'l Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323, 1327 (7th Cir. 1990) (notice is "critical because of our belief that it would be inequitable to hold a successor liable when it was unable to take the liability into account in negotiating the acquisition price."); *New Era*, 179 F.3d at 403 (NLRB determination of successorship is for purposes of collective bargaining, not for determining liability under the Coal Act for retiree health benefits).

Given the plain language of the Act and the absence of any persuasive legislative history to the contrary, it is highly improbable that Congress would purposely omit the term "successor in interest" from the definition of signatory operator, while intending that the Commissioner might nevertheless impose that liability on an asset purchaser. To do so would assume a congressional willingness in the Coal Act's definitional section to implicitly and retroactively override bedrock corporate law principles. *See United States v. Bestfoods*, 524 U.S. 51 (1998); 15 William Meade Fletcher et al., *Cyclopedia of the Law of Private Corporations*, § 7122, at 188 (perm. ed. rev. vol. 1983) ("Where one company sells or otherwise transfers all of its assets to another company, the latter is not liable for the debts and liabilities of the transferor.").

The Commissioner's excursion into background principles of successorship principles in other federal statutes is totally undercut by provisions in the Coal Act itself. Sections 9706(b)(2) and 9711(g)(2) specifically provide post-enactment successors with an *option* to assume a signatory operator's Coal Act obligations. These Coal Act sections demonstrate Congress chose to *exempt* a successor from such liability, even one that had full knowledge of the seller's Coal Act obligations. Since companies that acquire assets of signatory operators post-enactment do not take Coal Act liability by operation of law, there is no reason to conclude that Congress *implicitly* intended that companies which acquired assets of signatory operators *pre-enactment* take such liability by operation of law, where the plain language of the statute contains no such requirement. Thus, Congress disavowed _rather than embraced the

background successorship notions reflected in the cases relied upon by the Commissioner.

Moreover, Congress has repeatedly enacted explicit statutory provisions which accomplish what the Commissioner and *Amici* Trustees' of the Combined Fund endeavor to read into the Coal Act definitions. In 1972 and continuing through a series of amendments, Congress crafted, revisited, and significantly amended the Black Lung Act which sets out a comprehensive, cost-spreading scheme for delivering statutorily prescribed benefits to thousands of retired miners (and their dependents). *See generally Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976) (upholding constitutionality of 1972 black lung statute). This scheme explicitly captures a wide variety of pre-enactment commercial transactions involving coal properties and assets.

From the outset (and to this day) "successors" fall explicitly within this statutory scheme, and they are required to secure the benefits of eligible miners employed by the prior operator.[18] Notably, however, "to decrease the [retroactive] burden on operators and former operators," Congress and regulators specified in the 1977 Black Lung amendments that "liability would not be imposed" based on last employment prior to 1970. *See* 43 Fed. Reg. 36803 (Aug. 18, 1978); 30 U.S.C. § 932(j)(2).

A comparison between the Black Lung Act and the Coal Act is striking as regards the treatment of successors or

---

[18] 30 U.S.C. § 932(i)(3)(D) ("If an operator ceases to exist by reason of a sale of substantially all its assets . . . the successor operator . . . shall be treated as the operator. . . . ").

successors in interest. The Black Lung Act *specifically* envisions the assignment of liability to successor operators, and *explicitly* directs the Secretary of Labor to implement a regulatory program to develop the meaning of a responsible operator.[19] In the Coal Act Congress provided *no* authority to the Commissioner to develop a regulatory program expanding upon the meaning of these terms. The difference between Congress's explicit imposition of successor liability and agency regulatory authority for black lung benefits and the absence of successor liability and agency regulatory authority in the Coal Act demonstrates there was no intention under the Coal Act to capture pre-enactment successors.

3. There Is No Evidence That a Purpose of the Coal Act Was to Impose Liability on a Successor in Interest to a Signatory Operator

The Commissioner further argues that Congress sought to make "entities with connections to employees" responsible for those employees' health care costs. Pet. Br. at 20. To this end, he cites a statement by Senator Wallop that the number of entities made jointly and severally liable for a signatory's obligations under the definition of related persons is intentionally very broad, and that the overriding purpose of the related person provision is to find a specific obligor for as many beneficiaries in the plans as possible. *Id.* at 27, 29. Jericol, of

---

[19] 30 U.S.C. § 932(h) ("The Secretary [of Labor] . . . may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.").

course, had *no* connection with Shackleford's retirees. Further, as written, § 9701(c)(2)(A) already broadly extends liability to a very large group of entities. Congress's decision to not also impose liability on the successors in interest of signatory operators does not undermine its separate assignment of liability to related persons of the signatory operator, and successors in interest to those related persons. *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) ("[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law."); *Eastern Associated Coal Corp. v. UMWA*, 531 U.S. 57, 68 (2000) (Scalia, J., concurring) ("The final form of a statute or regulation, especially in the regulated fields . . . is often the result of compromise among various interest groups, resulting in a decision to go so far and no farther."); *see also West Virginia Univ. Hosps.*, 499 U.S. at 98 (purpose of the statute includes not only what it sets out to change but also what it resolves to leave alone).

While the Commissioner focuses on legislative comments which refer to imposing liability broadly, he glosses over remarks that demonstrate the underlying rationale of the Act was to impose liability *on the economic unit* that benefitted from the retirees' work. The technical explanation of the Coal Act inserted into the *Congressional Record* by Senator Wallop notes a preference for "a definition of responsible operator which includes every entity related to the responsible operator . . . . Broadening the definition of responsible operator in this manner is the essence of the Conference Agreement. *It recognizes the financial interdependence of these related entities* . . . ." 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992)

(emphasis added). The technical explanation further underscores the essential common ownership nexus providing "[t]his [determination] date was fixed to insure that parent corporations or other entitites related to a signatory operator could not evade responsibility for the obligations imposed under the Conference agreement *by divesting themselves of their ownership connection* . . . . " *Id.* at S17604.

Indeed, if the overarching purpose of the Coal Act simply was to assign liability to as many persons as possible, *see* Pet. Br. at 21, the Act does not accomplish that goal. For example, the Act does not provide that where an assigned operator goes out of business the operator's beneficiaries may be assigned to a prior employer. They are simply allocated to the unassigned pool and their health care costs are covered from the AML Fund. *See supra* at 13-14. The Commissioner has not assigned such beneficiaries to a prior employer although one could argue that nothing in the statute *specifically* prohibits that approach. The Commissioner's reasoning would also support a policy assigning liability to the owner(s) of a defunct signatory company. Imposition of such personal liability would impose liability upon a *person* who actually benefitted from the retiree's services. Again, the statute does not *specifically* prohibit imposing liability on individuals.

The legislative history is completely consistent with the liability expansion that flows from application of the related person definition as written. There is simply no evidence of clear congressional intent for executive branch administrators to expand the broad "related person" definition (which specifically incorporates the tax code's mechanical "controlled group" rules) to additionally capture successors of signatory operators.

"[W]hen legislation expressly provides a particular remedy . . . courts should not expand the coverage of the statute to subsume other remedies." *Northwest Airlines, Inc. v. Transport Workers Union of America*, 451 U.S. 77, 94 n.30 (1981)(quoting *National R.R. Passengers Corp.v. National Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974)).

C. Congress Did Not Delegate The Commissioner Authority to Expand Liability Under The Act

This case involves the application of unambiguous Coal Act definitional terms. The Commissioner's inconsistent internal guidelines are not entitled to deference. *Christensen v. Harris County*, 529 U.S. 576 (2000); *United States v. Mead*, 121 S. Ct. 2164 (2001); *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984).

Although Congress often grants federal agencies authority to establish standards, Congress conferred no such law-making authority in connection with the Social Security Administration's ministerial, "one-time" Coal Act assignment responsibility. In contrast to the Labor Department's duties under the Black Lung Act, the Commissioner was charged with two discrete functions: calculate the annual per-beneficiary premiums assigned operators are required to pay to the Combined Fund, and review individual wage records and make assignments by October 1, 1993, in accordance with criteria set out in § 9706(a).[20]

---

[20] As Acting SSA Commissioner, Lawrence Thompson acknowledged in September 1993 testimony to a congressional oversight

Further, the Commissioner never engaged in any substantive rulemaking under the Administrative Procedures Act (APA) concerning the interpretation of the Coal Act, or its definitional terms. The agency simply developed internal instructions to guide the assignment process. In fact, from passage of the Act until July 1995, these interpretations were in a constant state of flux.[21] Moreover, unlike the Department of Labor or the National Labor Relations Board, SSA has no

committee concerning SSA's specific Coal Act responsibilities, "[t]he Coal Act is very precise as to the way we assign miners to coal operators, and *SSA has no discretion as to the way we apply the criteria.*" *Provisions Relating to the Health Benefits Retired Coal Miners: Hearing Before the Comm. On Ways and Means House of Representatives* (Serial 103-59), 103d Cong. 24 (statement of Lawrence H. Thompson Acting Commissioner of Social Security) (emphasis added).

[21] In the summer of 1993 the agency initially interpreted the Coal Act as not imposing any liability on the "successors" or "successors in interest" of signatory operators. David J. Laurent et al., *Successor Liability Under the Coal Industry Retiree Health Benefit Act of 1992*, 18 E. Min. L. Inst. ch. 1, at 22 (1998) [hereinafter Laurent] (citing SSA Transmittal No. 7, dated August 1993). By January 1994, the agency had issued instructions which purported to define successor in interest narrowly using the definition in *Black's Law Dictionary*. J.A. at 63-64; Laurent at 22-23 (citing Transmittal No. 9 at RM T01402.051-2-052A.1). In December, 1994, the agency began instructing personnel to hold successor companies liable under certain circumstances. Laurent at 23-24 (citing Supplemental Coal Act Review Instructions No. 3 at 34-6). By July 1995, SSA had completed an interpretative about-face and personnel were now instructed that a signatory operator's "successor" and "successor in interest" were included in the definition of "related persons." Pet. Appdx. at 83a - 94a; Laurent at 24 (Supplemental Coal Act Review Instructions No. 4 at 3).

expertise with the coal industry or its development over the past 40 years. Under these circumstances, the Commissioner's suggestion that his determination should be upheld as "reasonable" is unavailing.

D. Applying § 9701(c) As Written Does Not Produce A Result In Conflict With The Act

In actuality, the Commissioner's argument is not so much about the consequences of the *absence* of language authorizing imposition of liability on a successor in interest to a signatory operator, as it is about the *presence* of language which imposes that liability on a successor in interest to a related person to the signatory operator. The Commissioner suggests that permitting the assignment of liability to "a more peripherally related successor to a corporate affiliate of the signatory, in a different line of business," but not to a successor to the signatory itself, is so odd that Congress could not have intended this result. Pet. Br. at 19, 31.

The problem with the Commissioner's reasoning is that it requires the Court to legislate, not interpret. By ignoring the plain language of a statute, the Commissioner second guesses the compromises which preceded an agreement (and without which a legislative solution may not have emerged).[22] It is

[22]The Court has been especially sensitive to this consideration where the statute involves issues of "private law" as opposed to "public law," perhaps implicitly recognizing the value in adhering "as closely as possible to what the parties themselves negotiated and supposed that framework to be." Courtney Simmons, *Unmasking the Rhetoric of Purpose: The Supreme Court and Legislative Compromise*, 44 Emory L.J. 117, 122 (1995).

simply not the Commissioner's responsibility to improve upon Congress's solution as set out in the statute by super-imposing his selective view of the legislature's objectives. As the Court stated in *Board of Governors of the Fed. Reserve v. Dimensions Fin. Corp.*, 474 U.S. 361 (1986):

> Application of "broad purposes" of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action. Congress may be unanimous in its intent to stamp out some vague social or economic evil; however, because its Members may differ sharply on the means for effectuating that intent, the final language of the legislation may reflect hard-fought compromises. Invocation of the "plain purpose" of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent.

Id. at 373-74.

Instances in which a court may override plainly written legislation for reasons unrelated to its constitutionality are rare, and the standards are exacting. *Crooks v. Harrelson*, 282 U.S. 55, 61 (1930) ("[U]nless the Constitution be violated, Congress may select the subjects of taxation and qualify them differently as it sees fit; and if it has done so in plain terms . . . it is not within the province of the court to modify the law by construction."). *Crooks* guides interpretation of the Coal Act because, like the federal estate tax provision at issue in *Crooks*, Coal Act premiums are housed in the tax code. In *Crooks*, the

Court noted that "to justify a departure from the letter of the law . . . the absurdity must be so gross as to shock the general moral or common sense. And there must be something to make plain the intent of Congress that the letter of the statute is not to prevail." *Id.* at 60 (citation omitted). In *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989)(quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)), the Court observed that "the plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'"

Interestingly, the Commissioner does not outright ask the Court to reject § 9701(c)(2)(A) as written. Instead, he returns to this theme subtly and frequently, alluding to the supposedly anomalous result that arises from a literal application of the statute's plain language. Pet. Br. at 16, 19, 23, 31. Notwithstanding the Commissioner's concerns, there are, in fact, many reasons why Congress would have purposely exempted successors in interest of a signatory operator from the "related person" definition.

1. Coal operators doubtless would have opposed legislation that would have put them at risk for liability associated with miners they did not employ. This point was discussed at length by the court of appeals,[23] and the

---

[23] *Sigmon Coal*, 226 F.3d at 307-308 (Pet. Appdx. at 33a-34a).

> As observed in the Coal Commission's report to Congress, over half of the pre-Coal Act beneficiaries were "orphans" who were drawing benefits from a pot jointly funded by coal operators. [citation omitted]. A

background facts suggest this explanation is completely consistent with the events which enabled the compromise that led to enactment.

Members of the BCOA were a driving force in the passage of the Coal Act. 138 Cong. Rec. S17636 (daily ed. Oct. 8, 1992) (statement of Sen. Warner) ("Recognizing the shortfall in funding, and faced with their inability to honor their obligations to the retired union membership, the BCOA and the UMWA have turned to the Federal Government."). BCOA member companies accepted financial responsibility for providing for *their* retirees, but sought relief from the burden of providing health care for miners they had not employed.[24]

An assignment formula placing liability upon successor companies would have raised the specter of liability for a large and potentially unquantifiable number of additional retirees linked to decades-old asset purchases. Because of their extensive history of buying and selling coal mines, successor liability covering 40 years of pre-Act transactions could have exploded the number of Combined Fund beneficiaries potentially assignable to the 1988 signatory operators.[25]

---

major complaint lodged by the coal operators was that they were being required to pay benefits for retired miners who never worked for them or maintained any other relationship with them. *See* 138 Cong. Rec. S17566-01, S17607 ("The coal companies that are still fully signatory to the bargaining agreement have complained that for every dollar they have been paying into the UMWA 1950 and 1974 Health Benefit Funds for their own retirees and dependants, they pay an additional three dollars on behalf of 'orphans' of other companies."). Imposing liability under the Combined Fund upon successors in interest to signatory operators would produce the same results because operators that did not receive the benefit of the retired miners' employment would nevertheless be responsible for them under the Combined Fund. In fact, such a requirement would arguably have put coal operators who purchased another operator's assets in a worse position, since under the Act they are solely responsible for their assigned retirees. Jericol suggests that in an industry where buying and selling coal mining assets is commonplace, such a provision would present a significant impediment to the coal companies' support for the Coal Act, which, in turn, would supply Congress with a motive for omitting the provision. Indeed, the scheme for assigning retirees to coal operators was a point of contention throughout the legislative process.

[24] As the Coal Commission noted "[s]ignatory coal operators who are still in the coal business are willing to pay the fair cost of their retirees, but are increasingly unwilling to shoulder the burden of paying for orphans, which they view as an industry-wide problem." Coal Comm. Rpt. at vii (Executive Summary).

[25] Coal companies routinely buy and sell coal mines and coal property to gather a sufficient reserve base to facilitate a viable mining unit, and it is common for a coal mine to have had multiple owners. *See Amax Coal Co. v. NLRB*, 614 F.2d 872, 885-886 (3d Cir. 1980), *rev'd on other grounds*, 453 U.S. 322 (1981) (1988 signatory challenging the legality of UMWA's proposed "successorship" clause (circa 1974) designed to impose bargaining agreement on transferees, and citing Amax's "essential" practice of continually purchasing and trading coal lands and reserves); *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124 (4th Cir. 1996) (detailing convoluted ownership history of particular coal mine); *U.S. Pipe*

It would have been difficult for the 1988 signatories to even estimate their potential liability under a legislative fix that included successor liability. Ninety percent of the beneficiaries to be assigned were in the 1950 Benefit Plan, which meant they had retired prior to 1976.[26] Even assuming that the UMWA Funds could provide the 1988 signatory companies data about the number of beneficiaries who had retired from each out-of-business former signatory, it would have been difficult to connect specific beneficiaries to a particular mine that a 1988 signatory might have acquired. *See* Brief of *Amicus Curiae* USX Corporation and U.S. Steel Mining, LLC in Support of Jericol at 9-10, *Massanari v. Sigmon Coal Co.*, No. 00-1307, *cert. granted* (U.S. Apr. 23, 2001) (describing SSA's assignment of several hundred retired miners to USX based on its 1970 purchase of a mine from a defunct signatory, even though few if any of the assigned miners actually worked at that mine, and even though USX sold that mine in 1982 to another

---

& Foundry Co. v. Webb, 595 F.2d 264, 273 (5th Cir. 1979) ("Many [black lung] claimants are elderly and have not worked in coal mines for many years. A coal mine in which a claimant was employed may change operators over a period of years. Identifying a responsible operator or a potentially responsible operator is often difficult and time consuming.")(citation omitted).

[26] As of December 1989, 114,300 of the 127,052 UMWA retirees and dependents were in the 1950 Benefit Plan. Nearly half had formerly worked for signatory employers no longer in operation or no longer contributing to the Plans. Coal Comm. Rpt. at 44, 62-64. Thus, literally thousands of pre-1976 UMWA retirees were potential candidates for assignment to a 1988 NBCWA signatory under a broad based, NLRA-type successor liability concept.

company that continues to operate it today). Successor liability also could have led to litigation between operators concerning which was the most responsible party. *See e.g., Carbon Fuel Co.*, 100 F.3d at 1124 (Coal Act liability cross-claims for sale and leasing arrangements involving five coal mining companies). Against this backdrop, it is hard to imagine that the 1988 signatory companies would have agreed to a compromise that exposed them to open-ended statutory liability linked to decades of buying, selling and trading coal property.

2. Congress also may have concluded that injecting coal industry successor issues into the Commissioner's task of allocating liability for more than 100,000 UMWA retirees and dependents would consume a disproportionate share of the agency's resources, create gridlock in the assignment process, precipitate endless operator challenges under the Coal Act's administrative review process, § 9706(f), and thwart implementation of the program.[27]

---

[27] The problems presented by the specter of unraveling 40 years of transactions with out-of-business signatories explains why the Combined Fund and the 1992 Plan definitional treatment of "successor in interest" differ. The ramifications of successor liability for Combined Fund obligations would have been anathema to many of the 1988 NBCWA signatory operators, but the 1992 Plan presents different considerations. That Plan provides benefits to miners who retired between July 20, 1992 and September 30, 1994, so its beneficiary population is limited and recent and the problem of unraveling decades of transactions is not a significant consideration. Additionally, Congress identified external sources for funding unassigned Combined Fund beneficiaries' health care, but required the 1988 NBCWA signatories to finance the 1992 Plan themselves, without any mitigating contribution from the AML Fund or the UMWA 1950

Congress delegated the task of making Coal Act assignments to SSA because it was the repository of employee earnings records, a critical component in making Coal Act assignments. However, SSA had no database which might provide a basis for beginning a successor analysis. *See* August 1994 internal agency correspondence, J.A. at 111 ("SSA had very limited information about the type of relationship that existed between a signatory operator and its 'related company'. All that was known, generally, was that some type of relationship existed and, most probably these would prove to be parent-child or sister company relationships . . . . Now, as additional evidence of company relationships is becoming available during the administrative review process, it appears that . . . some relationships actually involve successors . . .").

Congress allowed SSA less than a year to assign the 100,000 Combined Fund beneficiaries to former employers. 26 U.S.C. § 9706(a); *Dixie Fuel Co. v. Commissioner of Soc. Sec.*, 171 F.3d 1052 (6th Cir. 1999) (September 30, 1993 Coal Act assignment cutoff date mandatory, not discretionary). Given this short turnaround, and Congress's familiarity with administrators' problems identifying coal mine retirees' employers under the Black Lung program, Congress may have

---

Pension Plan. Given these circumstances, 1988 NBCWA signatories may have supported imposing liability on successors in interest for 1992 Plan liability, if only to minimize their own liability as "guarantors" of that Plan. These differences would account for the fact that § 9711(g)(1) defines the term "last signatory operator" to include a successor in interest, whereas the definition of "signatory operator" in § 9701(c)(1) does not.

chosen to not impose a similar burden on an agency with no particular experience with the coal industry.[28]

3. Congress also could have been concerned about the adverse impact that successor liability might have had on the valuation and sale of union companies and properties. Congress was obviously sensitive to the economic impact that the Act would have on assigned operators. Sections 9706(b) and 9711(g)(2) specifically facilitate the post-enactment sale of coal property, because they provide that an assigned operator's Coal Act liability cannot be imposed on a post-enactment successor unless the successor specifically agrees to assume that obligation. This safe harbor notwithstanding, expanding §

---

[28] *See* Remarks of Coal Commission Vice-Chairman Henry Perritt, favoring an industry-wide tax at a time when reaching back to former signatory employers was contemplated to stop at 1978 not *1946*, as codified:

> It is also a matter of administrative feasibility. It is extremely difficult to build a financing mechanism that relies entirely on unscrambling the supply contracts, joint ventures, capital structures, and investment roles of a decade ago to pin responsibility on investment capital that has walked away from freely undertaken funding obligations.

Coal Comm. Rpt. at 77-78 (statement of Henry Peritt); *see also* Department of Labor Comments at 43 Fed. Reg. 36,803 (Aug. 18, 1978) ("The 1977 amendments to the black lung provisions of the Act were motivated in significant part by the inability of the Secretary of Labor to assess coal operators liability in the vast part of part C claims under the then existing law. This difficulty was caused primarily by the many and intricate corporate changes which characterized business in the coal industry during the late 1950s and 1960s.").

9701(c)(2)(A) to impose liability on an asset purchaser (for miners they never employed based on transactions that occurred decades earlier) would cast a pall over *future* asset purchases in the coal industry.

If Congress had retroactively burdened coal asset purchasers for financial shortfalls arising from failures under a private party contract, future purchasers would be wary about paying fair market value for coal property (particularly property which had been subject to union representation). This is because they would have a lingering concern that a property which has a great deal of value today might be a source of devastating liability in the future. A potential post-enactment purchaser would discount its value to account for the possibility that, having imposed retroactive liability for private party contract failures on asset purchasers once, Congress might do so again. Such concerns could destabilize the unionized industry's economic underpinning, at a time when many assigned operators might need to raise money (by selling property) to help defray costs imposed by the Act.

As the foregoing considerations demonstrate, there are many reasons why Congress might have chosen to not assign liability to successors in interest of signatory operators. We turn, therefore, to the question of why the Coal Act imposes liability on successors in interest of related persons. There are several possibilities.

As noted, the NBCWA signatories were a driving force behind the Coal Act. Logically, they would support the "related person" provision as written, because it broadened the contribution base to include former signatories and their affiliates. The 1988 NBCWA operators would have had no

interest, however, in protecting a signatory operator that sold its assets (and employed the retirees) or any company related to it (the *R.G. Johnson* panel used the example of a related Coca-Cola bottling company). Nor would they have cared if liability was assigned to the person who bought the assets of the Coca-Cola bottler. The 1988 NBCWA signatories were concerned about a 40 year practice of buying mining operations from signatory coal companies, not a 40 year history of buying Coca-Cola bottling plants. The 1988 signatory operators might even have welcomed the prospect that entities outside the coal industry might be called upon to help finance the Combined Fund.

On the other hand, it is doubtful that a "related person" to a defunct signatory operator (e.g., a Coca-Cola bottling company) would have been following the debate in 1992 over the UMWA retiree health care crisis, and it is virtually impossible that a "successor in interest" to a defunct bottling company would have been aware of Congress's interest in the problem. In short, coal companies that bought assets from coal companies paid close attention and are not covered through successorship. Non-coal companies that had previously bought assets from non-coal companies most likely were not paying attention and are covered. No one would have been looking out for their interests.

In this regard, although the Commissioner's argument hangs on the fact § 9701(c)(2)(A) authorizes liability to be assigned to a successor in interest to a related person, he has not pointed to a single instance where such liability was ever imposed. In the heat of reaching a negotiated legislative solution, affected operators likely focused on ensuring that

nothing appeared in § 9701(c) which could impose liability on their pre-enactment asset purchases, but saw no need to use any "political capital" to also exclude liability for successors in interest to related persons.[29]

The legislative process often involves tough negotiations and parochial considerations. This is simply the reality of the legislative process, and demonstrates the wisdom of judicial forbearance when litigants subsequently ask the court to ignore statutory language that is plain on its face.

As regards the Commissioner's concern that literal application of § 9701(c)(2)(A) yields an anomalous result, Respondents suggest that the consequences of applying his successorship policy to make them liable for Shackleford's employees' health care are far stranger. The Commissioner attempts to impose on Jericol a substantial financial liability on behalf of individuals it never employed, solely because of a garden-variety asset purchase 20 years distant. Most remarkably, however, the Commissioner could not impose this liability on Shackleford, were it in business today, because assignments to Shackleford would have been voided *ab initio* in response to this Court's decision in *Eastern Enterprises*.

---

[29]Assigning liability to an entity so distantly connected to a defunct signatory operator would, in any event, present serious Fifth Amendment issues. *See, e.g.*, 138 Cong. Rec. S17637-38 (daily ed. Oct. 8, 1992) (September 25, 1992 legal opinion discussing serious takings and due process issues raised by Coal Act derivative liability provisions). The 1988 signatories may have been content to let the courts sort the problem out if, in fact, liability was ever imposed on the purchaser of a Coca-Cola bottler's assets.

This result becomes even stranger when one considers that, because of the happenstance of the determination date for fixing related person status in § 9701(c)(2)(B), the Commissioner will (unless this Court says otherwise) impose liability on Jericol to pay for Shackleford's retirees, even though the Act bars him from assigning liability for Eastern Enterprise's retirees to its former subsidiary (because those two entities were not commonly owned on the related person determination date).

The point is not that the Commissioner should rewrite the Act so that he may assign Eastern's retirees to a former subsidiary, it is that the Act, as written, produces anomalous results in many situations. If the plain language of the Act is to be changed, the change must come from the Congress. As the Court stated in *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 483-84 (1992):

> Congress has spoken with great clarity to the precise question raised by this case. It is the duty of the courts to enforce the judgment of the Legislature, however much we might question its wisdom or fairness. Often we have urged the Congress to speak with greater clarity, and in this statute it has done so. If the effects of the law are to be alleviated, that is within the province of the Legislature. It is Congress that has the authority to change the statute, not the courts.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

John R. Woodrum
Counsel of Record
W. Gregory Mott
Heenan, Althen & Roles, LLP
1110 Vermont Avenue, N.W., # 400
Washington, D.C. 20005
(202) 887-0800

Harold R. Montgomery
Post Office Box 366
Jonesville, Virginia 24263
(703) 346-2006
Counsel for Respondents

July 24, 2001